

**TOWN OF CASTLE ROCK
EQUIPMENT AND SERVICES ACQUISITION AGREEMENT
(Castle Rock Recreation Center Metal Roof Replacement)**

DATE: _____, 2015.

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

COLORADO COMMERCIAL ROOFING, INC., a Colorado corporation, 4200 N. Weber Street, Suite 100, Colorado Springs, Colorado 80907 (“Contractor”)

RECITALS:

- A. The Town issued a Request for Proposals from qualified contractors with expertise in metal roof replacement.
- B. Contractor timely submitted its proposal.
- C. Town wishes to engage Contractor to provide the services more fully described in the following Agreement and Exhibits.

TERMS:

Section 1. Scope of Services. Contractor shall perform all of the services and provide all materials as set forth on *Exhibit 1* (“Work”). Contractor shall complete the Work consistent with standards and practices of the profession.

Section 2. Total Obligation. The Town’s total obligation to Contractor under this Agreement for the Work shall not exceed \$324,988 plus 10% contingency unless authorized in writing by the Town.

Section 3. Payment. Contractor shall invoice Town upon completion of the Work. Town may withhold payment in whole, or in part for the Work found by the Town to be defective, untimely, unsatisfactory, or otherwise not conforming to this Agreement, not in conformance with all applicable federal, state, and local laws, ordinances, rules and regulations, or if Contractor is in default of Section 6, below. Town shall remit payment, whether whole or in part within 15 days receipt of such invoice.

Section 4. Completion. Contractor understands time is of the essence in this Agreement. Contractor shall undertake the Work upon execution of this Agreement and complete the work not later than the designated timeframe of 2-3 months upon approval. Contractor shall devote adequate resources to assure timely completion of the Work in accordance with the standards specified in this Agreement. Contractor shall perform the Work under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 10 days written notice to Contractor. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

Section 5. Subcontractors. Contractor may utilize subcontractors to assist with specialized works as necessary to complete the Work. Contractor will submit any proposed subcontractor and the description of subcontractor services to the Town for its prior approval.

Section 6. Inspection and Warranty. Town reserves the right to inspect the Work provided under this Contract at all reasonable times and places during the term of this Contract. Alternatively, the Town may refuse the Work and cancel all or any part of this Agreement if Contractor fails to deliver all or any part of the Work in accordance with the terms and conditions of this Agreement. Failure by the Town to inspect and test the Work shall not relieve Contractor of such responsibility. Any acceptance by the Town shall not be deemed a waiver or settlement of any defect or nonconformity in such Work. If Town elects to accept nonconforming or defective Work, Town, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Town for the nonconformity or defect.

Contractor expressly warrants that all materials and/or equipment furnished under this Contract shall be free from defects in materials or workmanship, are installed properly and in accordance with the manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation. Contractor, shall, at its option, repair or replace any material and/or equipment that fail to satisfy this warranty during the warranty period. Additionally, Contractor agrees to assign to the Town all written manufacturer warranties relating to the supplies and to deliver such written warranties to the Town.

Section 7. Risk of Loss. With respect to any equipment provided under this Agreement, risk of loss shall not pass to the Town until such equipment has been received and accepted by the Town, pursuant to Section 6, above, at the destination specified by the Town. Contractor assumes full responsibility for packing, crating, marking, transporting, and liability for loss or damage in transit, notwithstanding any agreement by the Town to pay freight, express or other transportation charges.

Section 8. Assignment. This Agreement shall not be assigned by Contractor without the written consent of the Town.

Section 9. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 10. Prohibition Against Employing Illegal Aliens. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively. Contractor is prohibited from using the E-verify program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement for services knowingly employs or contracts with an illegal alien, Contractor shall:

A. Notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor if within three days of receiving notice required pursuant to this paragraph the subcontractor does not stop employee or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. §8-17.5-102(5).

If Contractor violates a provision of this Agreement required pursuant to C.R.S. §8-17.5-102, Town may terminate the Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Town.

Section 11. Insurance. Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. Contractor shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's

Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

B. The policies required above, except Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the Town, its officers and employees, as additional insureds. Every policy required above, except Workers' Compensation shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by Contractor's insurance agent as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which at the Town's discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Town.

E. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

Section 12. Indemnification. Contractor expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Contractor.

Section 13. Delays. Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Section 14. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 15. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 16. Time of the Essence. Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper.

Section 17. Default and Remedies. In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

Section 18. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 19. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

Section 20. Independent Contractor. Contractor and Town hereby represent that Contractor is an independent contractor for all purposes hereunder. As such, Contractor is not covered by any worker's compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Contractor shall not create any indebtedness on behalf of the Town.

Section 21. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare, Town Clerk

Paul Donahue, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

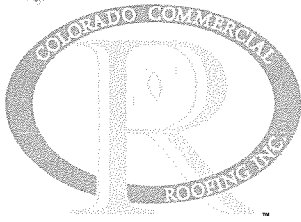
Jeff Brauer, Interim Parks & Recreation
Director

CONTRACTOR:

COLORADO COMMERCIAL ROOFING, INC.

By: _____

Its: _____



COLORADO COMMERCIAL ROOFING, INC. Exhibit 1

4200 N. Weber St., Suite 100
Colorado Springs, CO, 80907
Phone: (719) 466-3441, Fax: (719) 268-9370

www.ColoradoCommRoofing.com

Owner: City of Castle Rock
Building Info: Community Recreation Center
Job Address: 2301 Woodlands Blvd, Castle Rock
Building Desc: ReRoof Metal portion of Roof

Contact Person: Scott Smith, Facilities Administrator
Phone: (303) 435-3047 (cell)
E-Mail:
Proposal Date: 08/12/2015

Scope of Work: This is RFP-AW-2015-17, Recreation Center Roof Replacement.

Remove and recycle all existing older batten style metal roofing. Install new 15# felt and new metal roofing to reasonably match existing newer metal roofing. Includes new gutters, downspouts, and snow slides. Includes replacing all vertical batten style metal roofing also. Excludes all interior metal roofing. Includes all information noted on Rocky Mountain E-Purchasing, including through addendum #2 and the "Answers to Questions" posted 8/10/15. Existing metal soffit and related metal is not included.

Specifications:

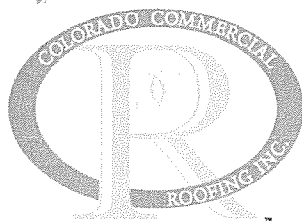
1. The existing older batten style metal roofing to be removed and recycled. Includes all vertical older batten style metal roofing, and all gutters and downspouts.
2. The existing felt underlayment will remain as is.
3. New 15# felt (rated for metal roof installations) will be installed over the whole field and vertical area.
4. The existing decking and insulation will be inspected for moisture. Areas of saturated decking and/or insulation will be documented and the Owner's Representative will be contacted. Agreed upon charges will added to this contract for any decking and/or insulation replacement. The saturated decking and/or insulation will be disposed of properly.
5. New MBCI "LocSeam" 16" wide 24 gauge standing seam metal roof to be installed per MBCI's specifications to meet 105 MPH 3 second wind burst. The field area of the metal will NOT be raised above the deck (the existing newer metal roof has a raised clip). All standard Signature 200 or 300 MBCI colors are available.
6. The connection between the newly installed metal roofing and the existing and to be new TPO flat roof areas will be installed per both MBCI and the TPO manufacturer's specifications.
7. Includes new metal valley flashing and new ridge metal (except where existing ridge metal has been recently replaced).
8. Includes up to 470 Amerimax #8505011 snow slide stops. This is more than enough slides @ 2 slides per 1' to cover:
 - a. All of the existing or formerly existing slide stops that are or were installed at the front entrances.
 - b. The upper roof's edge on the north west corner that is above the lower small shed roof
 - c. The edge of the small lower shed roof on the north west corner
 - d. Above the entrance on the lower north side roof.
 - e. Upslope of all gas line supports.
9. Existing plumbing, electrical, & HVAC penetrations to be flashed per MBCI's specifications
10. New matching gutters and downspouts (similar style and locations as existing) will be installed in the same locations as the existing gutters and downspouts.
11. CCR will take reasonable care when moving existing equipment, conduits, and piping, but CCR is not responsible for damage to existing equipment, conduits, & piping that is a result of this movement.
12. Warranty includes a 1 year workmanship warranty from Colorado Commercial Roofing and the standard MBCI Signature 200 or 300 Panel warranty. Various MBCI "Weathertightness" warranties that include MBCI covering the labor and material for longer periods are available for an additional cost.
13. Warranties offered apply only to roofing products that we install. It does not include coverage for moisture entering the roof system through walls, structural defects, HVAC equipment, gas & electrical conduit lines, vandalism or any other causes beyond our control. Warranty does not include any of the existing newer metal roof areas.
14. Daily clean-up of roofing debris in the work area, on the roof and around the building.
15. Worker's Compensation, General Liability, Excess Liability and Commercial Auto Insurance are provided to protect the Owner, occupant, and the property from potential worker injury claims or damage to the property.
16. Satellite dishes and other equipment that are located or mounted on the roof surface or parapets will have to be moved in order to install the new roof system. CCR will make every reasonable attempt to reset the satellite dish and/or equipment in the same position as it was prior to the roof installation. However, under, no circumstances will CCR be held responsible for any fee or service call related to the repositioning of any satellite dish or other equipment.

Continued on page 2

Purchaser: _____

CCR: _____

Max "JR" Walz, Customer Representative
719-357-3578, JR@ColoradoCommRoofing.com



COLORADO COMMERCIAL ROOFING, INC. Exhibit 1

4200 N. Weber St., Suite 100
Colorado Springs, CO, 80907
Phone: (719) 466-3441, Fax: (719) 268-9370

www.ColoradoCommRoofing.com

Owner: City of Castle Rock
Building Info: Community Recreation Center
Job Address: 2301 Woodlands Blvd, Castle Rock
Building Desc: ReRoof Metal portion of Roof

Contact Person: Scott Smith, Facilities Administrator
Phone: (303) 435-3047 (cell)
E-Mail:
Proposal Date: 08/12/2015

Specifications, Continued:

17. If there are wires, electrical conduit, pipes, or other attachments under the existing roof or attached to the decking or immediately beneath the decking, the Purchaser hereby agrees to hold CCR harmless and releases CCR from any and all damage (i.e.: a screw penetrating a wire or pipe) to the same caused by piercing with a fastener or otherwise, or for any outages caused by CCR's performance of its work hereunder.
18. By executing this Agreement, Purchaser represents to CCR that the existing roof system, decking or ceiling does not contain asbestos. CCR is not engaged in the identification, abatement, encapsulation, or removal of asbestos or materials containing asbestos and will not be responsible for disturbing asbestos or for asbestos abatement or removal. In the event that asbestos or materials containing asbestos are discovered during the course of the work described in the above proposal, CCR reserves the right to rescind this contract and receive payment for permits, materials and work performed or suspend its work for a reasonable period of time while the Purchaser engages a firm specializing in the removal and disposal of asbestos to remove the asbestos from the worksite.
19. OSHA recommendations for safety will be complied with.
20. CCR is not aware of nor will be responsible for damages attributable to hidden or latent defects in the existing structure.
21. Purchaser is fully responsible to ensure that the agreed upon new roof system meets or exceeds all applicable codes. CCR's proposed systems do meet typical IBC codes for typical commercial structures and all membrane manufacturer's specifications, but may not meet special codes that may be required of public buildings that CCR is unaware of.
22. Purchaser acknowledges that, while CCR is performing work, leaks may occur in the old roof and Purchaser hereby agrees to hold CCR harmless and releases CCR from any damage caused to Purchaser's property thereby.
23. Prices are based on this project starting in the fall of 2015, and it is anticipated to take approx. 2-3 months. CCR shall not be responsible for damage or delay due to weather, labor disputes, fires, accidents, material shortages or other causes beyond its reasonable control.
24. The price provided in this Proposal does NOT include the cost of snow removal. Should Purchaser desire or require snow removal to be performed, it will be done by CCR only upon payment of an additional agreed upon amount.
25. Additional work or deviation from the work herein described or damage to CCR's work by others or any labor required to be done other than during regular working hours shall be at additional cost and shall only be undertaken upon the written agreement of the Purchaser and CCR.
26. All CCR employees, including the members of the crew(s) on all of our jobsites & subcontractors (crane, dumpster, suppliers, and etc.) are compliant w/ CRS 8-17.5-101 et seq & all other requirements, including e-Verify. This means that **EVERYONE** on your site from CCR is covered by Workers Compensation & Liability Insurance.
27. The bid price assumes that this project is exempt from all sales and use taxes.
28. A Performance Bond and Labor and material Payment Bond are included.
29. Permit and inspection fees are included in the bid prices.
30. PAYMENT SCHEDULE, to be agreed upon.

Bid Price = \$324,988.00 _____ **Initial Here**

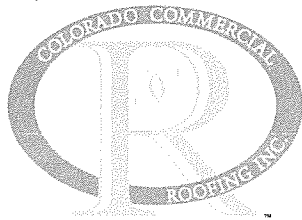
ADDITIONAL WARRANTY OPTIONS ARE AVAILABLE FOR ALL PRODUCTS FOR AN ADDITIONAL FEE

Continued on page 3

Purchaser: _____

CCR: _____

Max "JR" Walz, Customer Representative
719-357-3578, JR@ColoradoCommRoofing.com



COLORADO COMMERCIAL ROOFING, INC. Exhibit 1

4200 N. Weber St., Suite 100
Colorado Springs, CO, 80907
Phone: (719) 466-3441, Fax: (719) 268-9370

www.ColoradoCommRoofing.com

Owner: City of Castle Rock
Building Info: Community Recreation Center
Job Address: 2301 Woodlands Blvd, Castle Rock
Building Desc: ReRoof Metal portion of Roof

Contact Person: Scott Smith, Facilities Administrator
Phone: (303) 435-3047 (cell)
E-Mail:
Proposal Date: 08/12/2015

OFFER

The above terms, specifications and prices constitute a proposal by Colorado Commercial Roofing, Inc. (Herein after referred to as CCR) to furnish all labor and materials for the work specified herein. This offer can be rejected or modified prior to acceptance by an officer of CCR. Further, this document represents a proposal only by CCR, and must not be relied upon for any purpose until it has been accepted by the signature of an officer of CCR below, or by CCR's commencement of work. **Purchaser has only 30 days to accept this proposal** from CCR by affixing their signature, after which time its terms and conditions are subject to change or withdrawal.

Purchaser agrees to pay CCR the price shown herein. Purchaser agrees to make all payments directly to Colorado Commercial Roofing, Inc. with a joint check (if applicable) to our supplier as outlined herein.

If Purchaser defaults in making payments of the amounts due hereunder, such unpaid amounts shall accrue interest at the rate of 2% per month (24% per annum) until paid in full. Purchaser recognizes that if CCR is not paid in full as agreed that CCR, pursuant to Colo. Rev. Stat. 38-22-101 et seq., may file a mechanics lien on the real property upon which the work is performed to secure payment thereof and all warranties will be null and void. In the event that there is default or delay in payments by Purchaser, Purchaser acknowledges and agrees that Purchaser shall pay to CCR all sums due under this Agreement and all of CCR's costs and expenses of collection including, without limitation, its attorneys' fees whether suit is brought or otherwise.

Date:

Signature:

Printed Name:

ACCEPTANCE BY COLORADO COMMERCIAL ROOFING, INC.

Colorado Commercial Roofing, Inc. hereby agrees to accept this proposal & to perform the work as specified above, for the stated price.

Approved By: _____ Dated: _____

Mark E. Barnes Sr. - President